CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 474

THE UNITED STATES OF AMERICA, APPELLANT

vs.

JOSEPH L. CARBONE, VINCENT DiNUNNO, JOHN STROPPARO AND WANTEE HUHTANIEMI

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

FILED OCTOBER 1, 1945

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673853—45——1

1 In the District Court of the United States, District of Massachusetts

No. 16568, Criminal Docket

THE UNITED STATES OF AMERICA, BY INDICTMENT

v.

JOSEPH L. CARBONE, VINCENT DI NUNNO, JOHN STROPPARO, AND WANTEE HUHTANIEMI

Indictment

Returned and filed March 17, 1944

At a District Court of the United States of America, for the District of Massachusetts, begun and holden at Boston, within and for said District, on the third Tuesday of December in the year of our Lord one thousand nine hundred and forty-three.

The Jurors for the United States of America, within and for the District of Massachusetts, upon their oath, present that Joseph L. Carbone, John Stropparo, and Wantee Huhtaniemi, each of Fitchburg, Massachusetts, and Vincent Di Nunno of Boston, Massachusetts, did, at Fort Devens and at other places within the Commonwealth of Massachusetts to the Grand Jurors unknown, from the first of October 1940 to the thirtieth of March 1941, unlawfully and feloniously, and continuously conspire together, and with others to the Grand Jurors unknown, to commit an offense against the United States, to wit, to induce certain persons employed in the construction of certain public buildings and public works financed in whole by grants from the United States to give up a part of the compensation to which they
2 were entitled under their contracts of employment by force, intimidation, threat of procuring dismissal from such employment and by other means, in the following manner, to wit:

During the period of the alleged conspiracy, Coleman Bros. Corp. and John Bowen, Inc., each being a corporation, and hereafter referred to as the contractors, were engaged jointly in the construction of various public buildings for the United States at the said Fort Devens, pursuant to a contract dated September 9, 1940, between them and the United States, by which the contractors agreed to furnish the materials, equipment, and labor for the said construction, and by which the United States agreed to reimburse them for all such expenditures and in addition to pay them a fixed fee, and in the course of the said construction it became necessary for the contractors to employ about seventy-five hundred laborers, the exact number being to the Grand Jurors unknown;

And the said Joseph L. Carbone, who was then and there president of Local 39 of the International Hod Carriers' Building and Common Laborers' Union of America (which in September of 1940 had about one hundred members), and the said John Stropparo, who was then and there treasurer of the said Local, and the said Wantee Huhtaniemi, who was then and there financial secretary of the said Local, and the said Vincent Di Nunno who was then and there president of the Eastern Massachusetts Laborers District Council but was employed by the said Local 39, and who are hereafter described as the defendants, on or about October 16, 1940, made an agreement with the contractors, by virtue of their aforesaid positions, and connections with the said Local by which the contractors undertook to employ as laborers on the said construction only those who were approved by the defendants and to discharge any of those thus employed at the request of the defendants, and to employ and pay forty persons named by the defendants, known as stewards, who were to perform such duties as the defendants should direct, and to provide an office for the defendants on the site of the said construction;

And the defendants thereupon approved to the contractors for employment as laborers in the said construction, only such persons as were already members of said Local 39, or some other
3 local of the aforesaid International Union, and only such other persons as paid to the defendants the sum of five dollars. To such persons paying them five dollars, the defendants gave a receipt in the following form, to wit:

INTERNATIONAL LABORERS' UNION LOCAL 39, 304 Main St., Fitchburg, Mass.

No. ---------- Date ----------

Received of Mr. ----------

$5 cents— Total ----------

J. L. CARBONE,
Business Representative.

This receipt is good for one week from date.

And the defendants represented to the persons paying the five dollars that it would be regarded as an installment upon an initiation fee into said Local, and International Union (which fee was at first fifty dollars, then forty dollars, and thereafter twenty-five dollars), and that five dollars must be paid to them each week until the total initiation fee was paid, or the person would not be permitted to continue work upon the said construction;

And the defendants directed the said stewards each week to go among the laborers in the said construction and to inquire of each, who could not show membership in the said Local or International Union, whether he had a receipt showing that he had paid

five dollars for that current week, and if he did not have such a receipt, to demand from him that he pay the said five dollars to the defendants, or to them, immediately, under threat of procuring his dismissal from his employment if he did not pay the five dollars; which threat the defendants were able to carry out by reason of their aforesaid agreement with the contractors, the defendants well knowing, and intending, that the laborers would pay the said five dollars out of the compensation to which they were entitled under their contracts of employment with the said contractors;

And the defendants kept no records of the persons who had paid the five dollars to them, or to the stewards for them, either for the initial week or for subsequent weeks, except only that if a laborer should present to them receipts showing that he had paid the full amount of the initiation fee, then the defendants re-
4 corded his name and sent it to the headquarters of the International Hod Carriers, Building and Common Laborers' Union in Washington, D. C., with the sum of five dollars and thirty-five cents, which was that part of the initiation fee to which the International Union according to its rules was entitled:

And the defendants made no report to the Local 39, or to anyone, of the amount they had received from laborers paying less than the full initiation fee as aforesaid, or the total sums they had collected in this way, nor did they cause any of the sums collected in this way and received by them to be recorded in the Financial Secretary's book as the rules of the said International Union require: The defendants well knowing that the majority of those who paid the initial five dollars would not and did not complete payment of the full initiation fee;

And in all this the defendants acted in agreement, each aiding and abetting the other, and in this way induced the said workers to give up a part of the compensation to which they were entitled under their contract, representing always they they were acting for the said Local 39 and the International Union, but nevertheless concealing from the said Local 39 and the International Union the sums they collected as aforesaid from all persons who did not pay the full initiation fee, and transmitting to the Headquarters of the International Union for recording as members of the International Union, the names of only those laborers who could prove that they had paid the full initiation fee.

And in order to effect the object of the said unlawful and felonious conspiracy, the defendants did among others, the following overt acts, to wit:

1. On March 18, 1941, at Fitchburg, Massachusetts, the said Vincent Di Nunno attended a meeting of the said Local 39.

2. On October 16, 1940, the defendant Vincent Di Nunno went to the said Fort Devens.

3. On November 20, 1940, the defendants Joseph L. Carbone, John Stropparo and Wantee Huhtaniemi rented a safe deposit box in the Safety Fund National Bank in the said Fitchburg.

4. During the period of the conspiracy, the defendants maintained an office at the said Fort Devens, near the place where the said laborers were paid their weekly wages.

5. On or about December 1, 1940, at the said Fort Devens, the defendant Vincent Di Nunno asked John W. King, superintendent for the contractors, for a list of the laborers employed in the said construction.

6. At the said Fitchburg during and throughout the months of October, November, and December 1940, and January, February, and March 1941, the said John Stropparo and the said Wantee Hughtaniemi concealed from the members of said Local and from the officials of the International Union, the amounts collected from the laborers as aforesaid by not recording the sums thus collected, the amount of which is to the Grand Jurors unknown, in the Financial Secretary's Day Book provided for that purpose.

7. From November 20, 1940 to March 25, 1941, the defendants Joseph L. Carbone, John Stropparo and Wantee Hughtaniemi kept in a safe deposit box in the Safety Fund National Bank at the said Fitchburg, a sum of money, the amount of which is to the Grand Jurors unknown, which they had collected from the laborers in the aforesaid manner.

8. On March 28, 1941, the defendants Joseph L. Carbone and John Stropparo drew a check in favor of A. Persion on the Safety Fund National Bank, Fitchburg, Massachusetts, in the sum of four hundred sixty-four dollars and eighty-five cents.

9. During the period of the said conspiracy, the defendants collected from the said laborers in the aforesaid manner, certain sums of money, the amount of which is to the Grand Jurors unknown and sent to the Headquarters of the International Union at Washington, D. C. at various times therein, a total of $6,388.09, the last amount being sent on March 28, 1941.

Against the Peace and Dignity of the United States and of the statutes in such cases made and provided.

AMOS W. W. WOODCOCK,
Special Assistant to the Attorney General.

Section 276 (b), Title 40, U. S. C. A.
Sec. 88, Title 18, U. S. C. A.

PHILIP W. MORROW,
Foreman of the Grand Jury.

EDWARD D. HASSAN,
Asst. United States Attorney for the District of Massachusetts.

District of Massachusetts

March 19, 1944

Returned into the District Court by the Grand Jurors and filed.

ARTHUR M. BROWN,
Deputy Clerk.

This indictment was presented by the grand jury at the December Term of this court, A. D. 1943, on March 17, 1944.

In United States District Court

Motion of Defendant, Vincent Di Nunno, to dismiss

Filed April 6, 1944

And now comes the Defendant herein and says that the Indictment herein, and each and every count thereof, is not sufficient in law, to require the defendant to plead thereto, and, therefore, moves the Court to dismiss the indictment and each and every count thereof, and, for special reasons, shows unto the Court the following:

1. That there is pending against the Defendant a previous indictment which contains in substance allegations which propose to set out an offence charged again in this indictment.

2. That the present indictment, upon which the defendant has not been arraigned, was returned against the defendant on March 17, 1944, by the Grand Jury within and for this District, pending consideration by the Court of a Motion filed by the Government, seeking to vacate its order by reason of the decision rendered by the United States Supreme Court in the case of United States v. Laudani, Opinion dated January 3, 1944.

7 3. That the offence as set out in the allegations of this indictment, fails to clearly set forth the interpretation of Section 276b, of Title 40, in the United States Code, with relation to the word "whoever" and "contract of employment," under the Laudani decision.

4. That the allegations contained in the indictment fail to set forth that the defendant was vested with authority to fix and terminate the employer-employee status.

5. That the allegations in this indictment set forth that the defendant was President of the Eastern Massachusetts Laborers District Council of the International Hod Carriers Building & Common Laborers Union of America, and that he, with others, accused in the same indictment are officials of the Union under

an agreement with the contractor, with having the "power to approve the employment," and the "power to request the discharge of workers." This allegation fails of sufficiency to set forth a legal offence consistent with the interpretation of Section 276b, Title 40, United States Code, by the United States Supreme Court, with relation to "contract of employment" and the authority required to be alleged "to hire and discharge an employee", in the Laudani case.

By his Attorneys,

(Signed) MICHAEL CARCHIA.
WALTER F. LEWIS.

In United States District Court

Motion of Defendant, Joseph L. Carbone, to dismiss

Filed April 18, 1944

And now comes the defendant herein and says that the Indictment herein, and each and every count thereof, is not sufficient in law to require the defendant to plead thereto, and, therefore, moves the Court to dismiss the indictment and each and every count thereof, and, for special reasons, shows unto the Court the following:—

1. That there is pending against the defendant a previous indictment which contains in substance allegations which propose to set out an offence charged again in this indictment.

2. That the present indictment, upon which the defendant has not been arraigned, was returned against the defendant on March 17, 1944, by the Grand Jury within and for this District, pending consideration by the Court of a Motion filed by the Government, seeking to vacate its order by reason of the decision rendered by the United States Supreme Court in the case of United States v. Laudani, Opinion dated January 3, 1944.

That the offence as set out in the allegations of this indictment, fails to clearly set forth the interpretation of Section 276b, of Title 40, in the United States Code, with relation to the word "whoever" and "contract of employment," under the Laudani decision.

4. That the allegations contained in the indictment fail to set forth that the defendant was vested with authority to fix and terminate the employer-employee status.

5. That the allegations in this indictment set forth that the defendant was then and there President of Local 39 of the International Hod Carriers' Building and Common Laborers' Union of

America, and that he, with others, accused in the same indictment are officials of the Union under an agreement with the contractor, with having the "power to approve the employment," and the "power to request the discharge of workers." This allegation fails of sufficiency to set forth a legal offence consistent with the interpretation of Section 276b, Title 40, United States Code, by the United States Supreme Court, with relation to "contract of employment" and the authority required to be alleged "to hire and discharge an employee" in the Laudani case.

By his attorney,

(Signed) WILLIAM M. [illegible]

In United States District Court

Motion of Defendant John Stropparo, to dismiss

Filed April 18, 1944

And now comes the defendant herein and says that the indictment herein, and each and every count thereof, is not sufficient in law, to require the defendant to plead thereto, and, therefore, moves the Court to dismiss the indictment and each and every count thereof, and, for special reasons, shows unto the Court the following:

1. That there is pending against the defendant a previous indictment which contains in substance allegations which propose to set out an offence charged again in this indictment.

2. That the present indictment, upon which the defendant has not been arraigned, was returned against the defendant on March 17, 1944, by the Grand Jury within and for this District, pending consideration by the Court of a Motion filed by the Government, seeking to vacate its order by reason of the decision rendered by the United States Supreme Court in the case of United States v. Laudani, Opinion dated January 3, 1944.

3. That the offence as set out in the allegations of this indictment, fails to clearly set forth the interpretation of Section 276b, of Title 40, in the United States Code, with relation to the words "whoever" and "contract of employment," under the Laudani decision.

4. That the allegations contained in the indictment fail to set forth that the defendant was vested with authority to fix and terminate the employer-employee status.

5. That the allegations in this indictment set forth that the defendant was then and there Treasurer of Local 29 of the International Hod Carriers' Building and Common Laborers' Union of America, and that he, with others, accused in the same indictment

are officials of the Union under an agreement with the contractor, with having the "power to approve the employment," and the "power to request the discharge of workers." This allegation fails of sufficiency to set forth a legal offence consistent with the interpretation of Section 276b, Title 40, United States Code, by the United States Supreme Court, with relation to "contract of employment" and the authority required to be alleged "to hire and discharge an employee" in the Laudani case.

10 By his Attorney,

(Signed) WILLIAM M. QUADE.

In United States District Court

Motion of Defendant, Wantee Huhtaniemi, to dismiss

Filed April 18, 1944

And now comes the defendant herein and says that the Indictment herein, and each and every count thereof, is not sufficient in law, to require the defendant to plead thereto, and, therefore, moves the Court to dismiss the indictment and each and every count thereof, and, for special reasons, shows unto the Court the following:

1. That there is pending against the defendant a previous indictment which contains in substance allegations which propose to set out an offence charged again in this indictment.

2. That the present indictment, upon which the defendant has not been arraigned, was returned against the defendant on March 17, 1944, by the Grand Jury within and for this District, pending consideration by the Court of a Motion filed by the Government, seeking to vacate its order by reason of the decision rendered by the United States Supreme Court in the case of United States v. Laudani, Opinion dated January 3, 1944.

3. That the offence as set out in the allegations of this indictment, fails to clearly set forth the interpretation of Section 276b, of Title 40, in the United States Code, with relation to the word "whoever" and "contract of employment," under the Laudani decision.

4. That the allegations contained in the indictment fail to set forth that the defendant was vested with authority to fix and terminate the employer-employee status.

5. That the allegations in this indictment set forth that the defendant was then and there Financial Secretary of Local

11 39 of the International Hod Carriers' Building and Common Laborers' Union of America, and that he, with others, accused in the same indictment are officials of the Union under an agreement with the contractor, with having the "power to

approve the employment," and the "power to request the discharge of workers." This allegation fails of sufficiency to set forth a legal offence consistent with the interpretation of Section 276b, Title 40, United States Code, by the United States Supreme Court, with relation to "contract of employment" and the authority required to be alleged "to hire and discharge an employee" in the Laudani case.

By his Attorney,

(Signed) WILLIAM M. QUADE.

At the same term, on June 19, 1945, the cause came on for hearing on the foregoing motions to dismiss, the Honorable George C. Sweeney, District Judge, sitting, and was taken under advisement.

12 In United States District Court

Opinion

August 1, 1945

SWEENEY, J. This is an indictment for conspiracy to violate Section 1 of the so-called "Kickback" Act.[1] 48 Stat. 948; 40 U. S. C. A., Sec. 276b. To this indictment the defendants have filed motions to dismiss on the ground that the indictment does not state an offense cognizable in law. Another indictment was returned against these defendants over a year ago, and demurrers and motions to quash were sustained and allowed. United States v. Carbone et al., 56 F. Supp. 343.

At the time the alleged conspiracy occurred three of the defendants were officers of Local 39 of the International Hod Carriers' Building and Common Laborers' Union of America. The fourth defendant was employed by Local 39.

The indictment charges that, during the period of the alleged conspiracy, Coleman Bros., Inc. and John Bowen, Inc. were engaged in the construction of various public buildings for the United States at Fort Devens, Massachusetts, on a cost plus fixed fee contract, the contractors to furnish the materials, equipment and labor for the job; the defendants, by virtue of their
13 positions in Local 39, made an agreement with the contractors under which the contractors undertook to employ as laborers on the job only those who were approved by the defendants, and to discharge any of those thus employed at the request

[1] Section 1 provides that, "Whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both."

of the defendants; the defendants approved to the contractors only members of the Union or such persons as paid to the defendants the sum of five dollars; the continued approval of the defendants was conditioned upon the payment of five dollars per week until the full amount of the initiation fee into Local 39 and the International Union had been paid; the defendants threatened to procure the discharge of any workers who failed to make the required payments; the defendants knew and intended that the workers would make the payments out of compensation earned.

In United States v. Landani, 320 U. S. 543, a foreman, who had been vested by his employer with power to hire and discharge workers, was held to be indictable under Section 1 of the Kickback Act. In the course of the opinion the Court indicated the guides to be used in the interpretation of this section. Limitations were placed upon the broad scope of the literal meaning of "Whoever" in the statutory text. The essential element which would bring a defendant within the operation of Section 1 was inferred to be an allegation that he had been "vested by the employer with power to fix and terminate the employer-employee status." The position of the foreman in the Landani case in this regard is clear. It does not follow that these union officials similarly were vested with power to hire and fire. It is true that they could demand the exclusion of any worker who refused to meet the union requirements. However, this constitutes, not a delegation of the employer's authority, but a power founded upon a contractual obligation created by a collective bargaining agreement. These defendants do not stand in the shoes of the contractors; they represent an adverse interest.

14 I do not believe that either the history or the purpose of the Kick-back legislation warrants an extension of its scope to include these defendants. Language from the Senate Report quoted by Mr. Justice Black in the Landani case to support the inclusion of foremen, serves equally to support the exclusion of union officials. The closed shop is within the legitimate objectives of trade unionism. Implementation of this objective by the means used by these defendants should not expose them to the risk of criminal prosecution.

I am aware that there are decisions in other districts at variance with the views here expressed. United States v. Fuller, et al., 51 F. Supp. 953; United States v. Lombard, et al., 54 F. Supp. 507. However, I do not believe that they have reached the proper result.

The motions to dismiss the indictment are allowed.

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[2] Mr. Justice Black stated that hearings before the Senate Committee on the Judiciary "had revealed 'that large sums of money have been extracted from the pockets of American labor to enrich the contractors, subcontractors, and their officials.'" United States v. Landani, supra, p. 548.

15 In United States District Court

Petition for appeal

Filed August 30, 1945

Comes now the United States of America, plaintiff herein, and states that on the first day of August 1945, the District Court of the United States for the District of Massachusetts allowed motions to dismiss the indictment herein, and the United States of America, feeling aggrieved at the ruling of said District Court in allowing said motions to dismiss, prays that it may be allowed an appeal to the Supreme Court of the United States for reversal of said judgment and order, and that a transcript of record in this cause, duly authenticated, may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA,
(Signed) EDMUND J. BRANDON,
United States Attorney,
District of Massachusetts.

In United States District Court

Order allowing appeal to the Supreme Court of the United States

August 30, 1945

This cause having come on this day before the Court on petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for reversal of the judgment in this cause allowing motions to dismiss the indictment, and that a duly certified copy of the record in said cause be

16 transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered such petition, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is, therefore, by the Court, ordered and adjudged that the plaintiff herein, the United States of America, be, and it is hereby allowed an appeal from the order and judgment of this Court allowing Motions to Dismiss the indictment, to the Supreme Court of the United States, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court.

It is further ordered that the United States of America be, and it is hereby, permitted a period of forty days in which to file and docket the said appeal in the Supreme Court of the United States.

Dated at Boston, Massachusetts, this 30th day of August, 1945.

By the Court:

(Signed) CHARLES E. WYZANSKI, Jr.,
United States District Judge.

(In absence of SWEENEY, J.)

In United States District Court

Assignment of errors

Filed August 30, 1945

Comes now the United States of America, by Edmund J. Brandon, United States Attorney for the District of Massachusetts, and avers that in the record proceedings and judgment herein there is manifest error and against the just rights of the said plaintiff in this, to wit:

1. That the Court erred in granting the motions to dismiss the indictment.

2. That the Court erred in holding that the indictment does not state an offense cognizable in law.

17 3. That the Court erred in holding that the so-called Kickback Act, 48 Stat. 948, 40 U. S. C. 276b, applies only to employers or persons acting directly as their agents in exercising the power to employ and discharge employees.

4. That the Court erred in holding that union officials are ipso facto immune from prosecution under the Kickback Act even though, under color of union activity, they induce a person engaged on a federal project to give up part of his compensation for the personal enrichment of such officials.

(Signed) EDMUND J. BRANDON,
United States Attorney,
District of Massachusetts.

18 [Citation in usual form showing service on William M. Quade and Michael Carchia omitted in printing.]

19 In United States District Court

Praecipe for transcript of record

Filed August 30, 1945

To the Clerk, United States District Court
for the District of Massachusetts:

The appellant hereby directs that in preparing the transcript of the record in this cause in the United States District Court for the District of Massachusetts, in connection with its appeal to the Supreme Court of the United States, you include the following:

1. Docket entries and minute entries showing return of indictment, filing of Motions to Dismiss, and entry of order and judgment allowing Motions to Dismiss.
2. Indictment.
3. Motions to Dismiss.
4. Opinion allowing Motions to Dismiss.
5. Order allowing Motions to Dismiss and dismissing indictment.
6. Petition for Appeal to the Supreme Court.
7. Statement as to jurisdiction of the Supreme Court.
8. Assignment of errors.
9. Order allowing appeal.
10. Notice of service on appellees of petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.
11. Citation.
12. Praecipe.

(Signed) EDMUND J. BRANDON,
United States Attorney,
District of Massachusetts.

Service of the foregoing Praecipe for Transcript of Record is acknowledged this 30th day of August 1945.

(Signed) WILLIAM M. QUADE,
Attorney for Joseph L. Carbone,
Wantee Huhtaniemi and John Stropparo.
(Signed) MICHAEL CARCHIA,
Attorney for Vincent DiNunno.

20 In United States District Court

Motion as to final judgment and order thereon

September 26, 1945

Now comes the United States of America through Edmund J. Brandon, United States Attorney for the District of Massachusetts, and respectfully moves that this Honorable Court enter an order certifying that the docket entries in the above-captioned matter constitute and represent the final judgment of this Court upon the demurrers filed by the defendants or, in the alternative, respectfully requests this Court to cause an entry to be made upon the docket in said case of a formal judgment.

EDMUND J. BRANDON,
United States Attorney.
By Edward D. Hassan,
EDWARD D. HASSAN,
Assistant United States Attorney.

Denied, because not conforming to the practice in this District.
GEORGE C. SWEENEY,
U. S. D. Judge.

21 In United States District Court

Docket entries

1944

Mar. 17—Indictment returned.
Apr. 6—Motion to dismiss filed by deft. Vincent DiNunno.
Apr. 18—Motion to dismiss filed by deft. Carbone.
Apr. 18—Motion to dismiss filed by deft. Huhtaniemi.
Apr. 18—Motion to dismiss filed by deft. Stropparo.
June 19—Sweeney, J. Hearing on motions to dismiss; taken under advisement.

1945

Aug. 1—Sweeney, J. Opinion dated August 1, 1945 received and filed. "Motions to dismiss the indictment are allowed."
Aug. 1—Sweeney, J. Motions to dismiss indictment allowed.
Aug. 30—Petition for Appeal to Supreme Court of the United States filed by United States.

Aug. 30—Wyzanski, J. (in absence of Sweeney, J.) Order allowing appeal to Supreme Court.
Aug. 30—Wyzanski, J. Citation issued, returnable October 9th, 1945 (40 days).
Aug. 30—Praecipe filed by United States.
Aug. 30—Assignment of Errors filed by United States.
Aug. 30—Statement to defendants under Rule 12, par. 3 filed.
Aug. 30—Statement as to jurisdiction filed by United States.
Sept. 12—Statement against Jurisdiction and Motion to Dismiss Appeal filed by defendants.
Sept. 12—Affidavit of Service filed by United States Marshal.
Sept. 12—Affidavit of Service filed by United States Marshal.
Sept. 26—Motion for Entry of Formal Judgment filed by United States Attorney.
Sept. 26—Sweeney, J. Motion for Entry of Formal Judgment filed by United States Attorney denied because not conforming to the practice in this District.

22 [Clerk's certificate to foregoing transcript omitted in printing.]

23 In the Supreme Court of the United States

Statement of points to be relied upon and designation of record

Filed Oct. 11, 1945

Pursuant to Rule XIII, paragraph 9 of this Court, appellant states that it intends to rely upon all of the points in its assignments of error.

Appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

HAROLD JUDSON,
Acting Solicitor General.

Service of the above Statement of Points and Designation of Record acknowledged this 7 day of October 1945.

WILLIAM M. QUADE,
Counsel for Appellee.

[File endorsement omitted.]

24 Supreme Court of the United States

Order noting probable jurisdiction

November 5, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

Mr. Justice JACKSON took no part in the consideration of this question.

[Endorsement on cover:] File No. 50177. Massachusetts D. C. U. S. Term No. 474. The United States of America, Appellant vs. Joseph L. Carbone, Vincent Di Nunno, John Stropparo and Wantee Huhtaniemi. Filed October 1, 1945. Term No. 474 O. T. 1945.

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CHARLES ELMORE CROPLEY
CLERK

No. 474

In the Supreme Court of the United States

OCTOBER TERM, 1945

THE UNITED STATES OF AMERICA, APPELLANT

v.

JOSEPH L. CARBONE, VINCENT DINUCCIO, JOHN STROPPARO, AND WALTER HUNTASSERI

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

STATEMENT AS TO JURISDICTION